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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/487,000	03-07-2000	ULRICH BROCKEL	48320	7044

26474 7590 08-14-2002

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EXAMINER

PRATT, HELEN F

ART UNIT	PAPER NUMBER
1761	14

DATE MAILED: 08/14/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/487,000	BROCKEL ET AL.
Examiner	Art Unit	
Helen F. Pratt	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 06 June 2002.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1, 2, 4-19, 21 is/are pending in the application.
  - 4a) Of the above claim(s) 20 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,2 and 4-19 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
 

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### DETAILED ACTION

#### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4-19, 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Ooijen (GB 0608975 A) or Gonthier et al. or Kotani et al.

The claims are rejected for the reasons of record cited in the last office action.

## ARGUMENTS

Applicant's arguments filed 6-6-02 have been fully considered but they are not persuasive. Applicants argue that the Van Ooijen reference does not disclose their invention because it discloses a composition, which has a low concentration of carboxylic acid, but a highly pungent odor. However, as discussed below, it is seen that it would have been within the skill of the ordinary worker to use particular amounts of salts and acids. Van Ooijen discloses the use of 40-60% salt, but it can be from 1-90% salt (page 3, lines 10-15).

Applicants argue that nothing is mentioned that a composition with a high concentration of active ingredient would have only a slight odor. However, the abstract says on the last line ("reducing the risks of corrosion and unpleasant odours.".). Also,

as seen in applicants' examples, various amounts of acids are added to the salts with varying results. For instance, Ex. 1 shows the use of 15% formic acid and the product was odorless, Ex. 2 discloses 15% formic acid and a pungent odor, Ex. 3 shows 10% formic acid and a pungent odor, Ex. 5, 15% with an intense order, Ex. 6 same, Ex. 7 same. Example 8 shows the addition of 200 grams of "sodium formate melt" spayed as a binder onto the mixture (odorless), but not claimed, Ex. 10, similar to 8, but no melt is claimed. As seen from applicants' examples, various amounts of acid are used, and the examples using 15% acid have varying results depending on the salts used and the acids used. Therefore, as in Van Ooijen, who shows a wide range of acid, it is seen that it would have been within the skill of the ordinary worker to use particular amounts of ingredients. The discovery of an optimum value of a result effective variable is ordinarily within the skill of the art. In re Boesch, 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980). In developing an impregnated salt, properties such as odor are important. It appears that the precise ingredients as well as their proportions affect the odor of the product, and thus are result effective variables, which one of ordinary skill in the art would routinely optimize.

It is not seen that Gonthier et al. and Kontani et al. are not pertinent to the claimed invention because other constituents are not excluded.

The references are not to a combination, but are taken <sup>14</sup> separate, as noted by the term "or".

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Helen F. Pratt at telephone number 703-308-1978.

Hp 8-12-02

*HP*  
HELEN PRATT  
PRIMARY EXAMINER